IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1377 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMMAD IQBAL @ IQBALBHAI ISMAILBHAI MANSURI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 1377 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MS NADINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/05/2003

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 28-10-2002, by which the petitioner is detained as a "dangerous person"

under Prevention of Anti Social Activities Act (PASA for short). Along with the detention order, the petitioner is served with the grounds of detention of the same date. In the grounds of detention there is a reference of about two criminal cases, which are pending against the petitioner under Section 379, as well as, under Section 394 of the Indian Penal Code read with Section 135 of the Bombay Police Act.

2) The detaining authority after having satisfied about the activities has detained the petitioner under preventive detention. The said order of detention is challenged by the petitioner on various grounds. On behalf of the petitioner, it is submitted that at the relevant time the petitioner was already in judicial custody.

3) However, the detaining authority has not stated anything in this connection in the detention order. The learned AGP, Ms.Joshi has stated that in affidavit in reply, it is mentioned that the petitioner was arrested on 25-9-2002. The said aspect about arrest of the petitioner is mentioned in para 6 of the affidavit in reply filed by the detaining authority. In view of the aforesaid facts, it is clear that the petitioner was already arrested in connection with the criminal cases, but the detaining authority has not stated anything about the aforesaid aspect in the detention order at all. The detaining authority has not stated anything whether the petitioner was arrested or whether he was released on bail. This important aspect is missing in the detention order.

4) In that view of the matter, the order of detention is required to be quashed and set aside on the ground of non-application of mind as one important aspect is not reflected in the detention order.

5) The petition is accordingly allowed. The order of detention dated 28-10-2002 is quashed and set aside. The detenu, Mohmmad Iqbal @ Iqbalbhai Ismailbhai Mansuri is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.MAJMUDAR, J.)
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